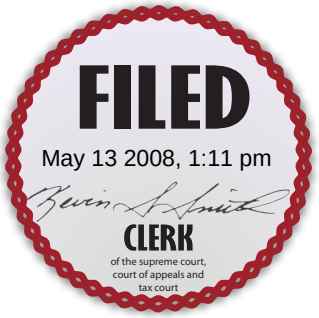

ATTORNEY FOR APPELLANT:

ANDREW B. ARNETT
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEPHEN R. CARTER
Attorney General of Indiana
Indianapolis, Indiana

IAN McLEAN
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

RAYMOND T. BENNETT,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 73A05-0711-CR-621
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE SHELBY SUPERIOR COURT
The Honorable Jack A. Tandy, Judge
Cause No. 73D01-0608-FA-17

MAY 13, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBERTSON, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Raymond T. Bennett ("Bennett") pled guilty to two counts of dealing in a controlled substance, Class A felonies[1], in an open plea agreement with a thirty-year cap on the executed portion of the sentence. Bennett appeals from the trial court's order sentencing him to an aggregate sentence of twenty-five years, with twenty years executed and five years suspended on each count. The trial court ordered the sentences to be served concurrently.

We affirm.

ISSUE

The sole issue raised in this appeal is: whether the trial judge abused his discretion or imposed an inappropriate sentence.

FACTS

The State charged Bennett with three Class A felonies, one Class C felony, and one Class D felony. Bennett pled guilty to two counts of dealing in a controlled substance, Class A felonies, in exchange for dismissal of the remaining counts charged against him. The plea agreement called for a thirty-year cap on the executed portion of his sentence.

During sentencing, the trial court found two aggravating circumstances: 1) Bennett's prior criminal history; and 2) that Bennett was in need of corrective treatment best provided by a commitment to a penal facility. The trial court found Bennett's age,

[1] A person who commits a Class A felony shall be imprisoned for a fixed term between twenty and fifty years, with the advisory sentence being thirty years. Ind. Code §35-50-2-4.

twenty-three, to be a mitigating circumstance. The trial court then imposed an aggregate sentence of twenty-five years, with twenty years executed and five years suspended on each count. The sentences were to be served concurrently.

DISCUSSION AND DECISION

Sentencing decisions rest within the sound discretion of the trial court, and are reviewed on appeal only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007).

Bennett argues that "the trial court never weighed or balanced the aggravating and mitigating factors." Appellant's Br. at 9.

A court may impose any sentence that is authorized by statute and permissible under the Constitution of the State of Indiana regardless of the presence of aggravating circumstances or mitigating circumstances. Ind. Code §35-38-1-7.1(d). Moreover, the weight or value assigned to any mitigating or aggravating sentencing factors that a trial court may properly find is not subject to review for an abuse of discretion. *Gervasio v. State*, 874 N.E.2d 1003, 1005 (Ind. Ct. App. 2007). Therefore, this aspect of the issue raised by Bennett is not subject to review by this court.

Bennett makes the argument that the trial court failed to find his alcohol and drug abuse and his remorse as mitigating factors. A trial judge can abuse his discretion by omitting reasons for imposing a sentence in a sentencing statement, when those reasons are clearly supported by the record and advanced for consideration. *Anglemyer*, 868 N.E.2d at 491. However, a defendant is required to establish that an omitted proposed mitigating factor is both significant and clearly supported by the record. *Id*. at 493.

Moreover, if a trial court does not find the existence of a mitigating factor after it has been argued by counsel, the trial court is not obligated to explain why it has found that the factor does not exist. *Id*.

The trial court could have found Bennett's drug and alcohol abuse to be an aggravating circumstance. *See Iddings v. State*, 772 N.E.2d 1006, 1018 (Ind. Ct. App. 2002). Further, the trial judge's finding that Bennett was in need of corrective treatment best provided by a commitment to a penal facility, arguably could be a consideration of Bennett's substance abuse. We say this, in part, because that factor is generally applied to sentences enhanced beyond the presumptive or, now, advisory sentence. *See e.g.*, *Prickett v. State*, 856 N.E.2d 1203, 1208 (Ind. 2006). Nonetheless, we find that the trial court properly considered the evidence when sentencing Bennett.

We find that Bennett's argument that the trial court failed to consider his remorse as evidence in mitigation likewise fails. The trial judge was in the best position to observe Bennett's emotions as he, and his mother, testified. *See Ousley v. State*, 807 N.E.2d 758, 764 (Ind. Ct. App. 2004). Further, the record reflects that his regret may have more to do with the punishment Bennett was receiving. *Id*. At any rate, the record reflects that Bennett's expressions of remorse are not more than equivocal. Therefore, Bennett has failed to establish that his remorse was both significant and clearly supported by the record.

Bennett makes passing references to our authority to review and revise sentences that are inappropriate in light of the nature of the offense and the character of the offender. *See* Article VII, Section 6 of the Indiana Constitution; Ind. Appellate Rule

7(B). The State makes a strong argument in favor of finding that Bennett has waived this aspect of his argument by failing to develop a cogent argument supported by citations to the authorities, statutes, and the appendix or parts of the record relied upon. *See* Ind. Appellate Rule 46(A)(8)(a). However, we will address Bennett's claim nevertheless.

With regard to the nature of the offense, the advisory sentence is the starting point in our consideration of an appropriate sentence for the crime committed. Bennett pled guilty to two Class A felonies. Ind. Code §35-50-2-4 provides that a person who commits a Class A felony shall be imprisoned for a fixed term of between twenty and fifty years, with the advisory sentence being thirty years. Bennett received an aggregate sentence of twenty-five years, which is five years less than the advisory sentence for each of the Class A felonies. Bennett sold heroin on two different occasions within one thousand feet of two different churches.

Regarding Bennett's character, the trial court noted Bennett's criminal history. By the time Bennett committed the instant offenses, Bennett had already received two adverse juvenile adjudications and nine criminal convictions. Appellant's App. p. 24-26. He has been found to be a delinquent or has been convicted as an adult in every year since he reached the age of thirteen. *Id*. Bennett's criminal history could have been used to enhance his sentence. However, the trial court chose to impose a sentence less than the advisory sentence.

Bennett has already received opportunities at rehabilitation that have not been successful. Bennett has received suspended sentences with probation and requirements

of rehabilitation. Bennett has received short terms of executed time combined with probation and attempts at rehabilitation.

Consequently, we decline to revise Bennett's sentence. His sentence is not inappropriate in light of the nature of the offense and the character of the offender.

CONCLUSION

Bennett's argument regarding the trial court's alleged faulty weighing of the aggravating and mitigating circumstances is not subject to review by this court. Further, the sentence imposed is not inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

BARNES, J., and VAIDIK, J., concur.